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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on August 16, 2007

\+ W.P.(C) 21407-409/2005

1. SATWANT SINGH SAWHNEY &ORS. ..... Petitioners
Through Mr. H.A. Ahmadi with Mr. Abhijat Sinha, Advocates

versus

UOI & ORS. ..... Respondents
Through Mr. Dalip Mehra for R-1
Ms. Reeta Kaul for R- 2/3

2.+ W.P.(C) 12255-57/2004

SATWANT SINGH SAWHNEY & ORS. ..... Petitioners
Through Mr. H.A. Ahmadi with Mr. Abhijat Sinha, Advocates

versus

UOI & ORS. ..... Respondents
Through Mr. Dalip Mehra for R-1
Ms. Reeta Kaul for R- 2/3

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat: (Open Court)

1. Issue rule. Mr. Dalip Mehra and Ms. Reeta Kaul accept notice on behalf of respondent No1 and respondent Nos. 2 and 3, respectively. With consent of

counsel, these petitions were heard for final disposal.

2. On 02.09.1977, the Directorate of Estates, Government of India issued a licence in favour of one Shri Gurbachan Singh, father of the present petitioners and Respondent Nos. 2 and 3. The licence enabled Shri Gurbachan Singh to carry on business activities in shop No. 166, Sarojini Nagar Market. The licensee, on 02.09.87 executed a Will bequeathing all his rights in respect of the premises, to his wife, during her life time, and after her, the said five sons. It is claimed by the present petitioners that the licensee Shri Gurbachan Singh entered into a partnership on 01.04.92 with them and passed away in 1996. The petitioners claim that subsequently on 08.06.96, they entered into a fresh partnership in the name and style of "M/s Sawhney Leather Emporium" with their mother.

3. The petitioners claim that on 21.08.96, Respondent Nos. 2 and 3 relinquished their shares to the property. They also claim that on 04.11.96, Smt. Prakash Kaur executed a gift deed transferring all her rights to the licenced property.

4. On 04.06.98, the petitioners' request for mutation of property in their favour, (made on 15.05.97) was acceded to; the Land and Development Officer recorded their names in the register. They also claim to have made some improvements in the property.

5. On 03.09.02, the first respondent issued a show cause notice to the following effect:

> *To,*
>
> *S/Sh. Satwant Singh Sawhney, Jaswant Singh Sawhney and Kuldeep Singh Sawhney,*

Flat No. 166, Sarojini Nagar Market,
New Delhi-23.

Sub: Property Shop No. 166, Sarojini Nagar Market, New Delhi.

Sir,

It has been brought to the notice of this office by S/Sh. Gurcharan Singh and Ranjit Singh sons of late Sh. Gurbachan Singh that the mutation of the property carried out in your name vide this office letter dated 04.06.97 has been obtained by you on the basis of forged and fake signatures and fabricated documents. A copy of their complaint dated 01.07.02 is herewith enclosed.

In view of the above position, you are hereby called upon to show cause within 15 days of the date of issue of this letter, as to why the mutation of the property Shop No. 166, Sarojini Nagar Market, carried out in your favour vide letter No, L& DO/PS-IV/Shop No. 166/SN. Mkt./543 dated 04.06.97 should not be withdrawn and cancelled. In case no reply is received within the stipulated period, the cancellation of mutation will be processed further without any reference to you.

Yours faithfully,

(A. Bhattacharyya)
Dy. Land & Development Officer"

6. The petitioners replied and resisted the proposed action. They relied upon the registered gift deed executed on 04.11.96 in their favour as also the other documents. They claimed that since the mutation had been made long back, no action towards its cancellation should be taken, by the L & DO. The petitioners were also assessed to property tax pursuant to the mutation.

7. The present petition is directed against an order dated 09.07.04 issued by the office of the L & DO. The order reads as follows:

To,
S/Sh. Satwant Singh Sawhney,
Jaswant Singh Sawhney and Kuldeep Singh Sawhney,
Flat No. 166, Sarojini Nagar Market,
New Delhi-23

Sub: Property Shop No. 166, Sarojini Nagar Market, New Delhi.

Sir,

I am directed to refer to this office letter of even number dated 03.09.2002 wherein you were called upon to show cause as to why the mutation of the property Shop No. 166, Sarojini Nagar Market, New Delhi carried out in you favour should not be withdrawn and to say that the reply furnished by you vide you letter dated 09.09.2002 and the records available in this office have been examined in consultation with the forensic experts and it is established that the affidavits in the name of S/Sh. Ranjit Singh and Gurcharan Singh furnished to this office along with the substitution application dated 08.07.1996 of Smt. Prakash Kaur and also along with you letter dated Nil (received in this office on 14th May, 1997) in connection with the mutation application dated 21.08.1996 were not genuine and therefore the substitution of the property Shop No. 166, Sarojini Nagar Market in the name of Smt. Prakash Kaur vide this office letter dated 21.08.1996 and the mutation of the property in your names vide this office letter dated 04.06.1997 have been withdrawn and cancelled. If you have any grievance in this regard, you may approach the competent Court of law.

Yours faithfully,

Sd/-
Public Relation Officer
For & on behalf of President of India"

8. Learned counsel contends that the findings of the L & DO without affording any opportunity to the petitioners that the affidavits of respondent Nos. 2 and 3 (furnished to it) were fabricated and that the application of Smt. Prakash Kaur was also not genuine cannot be sustained. It is claimed that the petitioners had answered the show cause notice within the time granted on 09.09.02. In these circumstances the respondents could not have unilaterally concluded that the documents were forged and proceeded to cancel the mutation.

9. The counsel for the respondents submitted that the order was issued after considering all the circumstances, in view of the report of the FSL received by the

L & DO, which indicated that the documents were not genuine. It was submitted that the affidavits of respondent Nos. 2 and 3 and the claims were suspect; after the allegations were confirmed it was thought appropriate to cancel the mutation. Counsel also contended that the petitioner himself never sought a hearing. In these circumstances, there was no question of affording any further opportunity.

10. The factual matrix would show that the respondent L&DO issued a notice on 03.09.2002 alleging that the documents, upon which the mutation in the petitioners' favour were premised, were forged and not genuine. The petitioners resisted the notice and gave their objections. However, the respondents did not put the materials collected in their enquiry, to the petitioner. One of the fundamental rules of fair procedure is that no party, likely to face serious consequences by an order of an administrative body or agency, should be confronted with an adverse order without the basis of such order being disclosed to him, in the absence of some rudimentary opportunity. Although, in this case the show cause notice was issued on 3.9.2002, the respondent did not choose to put to the petitioners the adverse materials which they ultimately sought to rely upon, namely, the report of the FSL and the statements or other materials gathered from respondent Nos. 2 and 3. The cancellation of mutation, had grave and serious consequences; all the more in the facts of this case, as it was based on allegations of forgery and fabrication. In these circumstances, I am of the opinion that the impugned order is not sustainable.

11. The position of the respondents appears to be that the second and third respondents had not consented to the transfer or mutation and the that the gift

did was not genuine. In these circumstances, I am of the opinion that the appropriate course at this stage would be to relegate the parties, to the status quo ante as on the date of the impugned order. The L&DO should proceed with an enquiry and disclose the relevant report which it seeks to rely upon fairly to the petitioner. It is open to the petitioners to file such documents or produce such materials as they would seek to rely upon.

12. The respondents shall accordingly furnish a copy of the FSL report and other documents on the basis of which it formed its opinion for issuing the impugned order to the petitioners within 10 days from today. The petitioners shall file the relevant materials/affidavits/documents in reply two weeks thereafter. They shall be afforded opportunity along with respondent Nos. 2 and 3 thereafter on a specific date to be fixed by the L&DO. At the end of the proceedings, the L&DO shall issue a speaking order and communicate the same to the parties. The entire proceedings shall be concluded within three months from today.

13. All rights and contentions of the parties are hereby reserved. The petitions are disposed off in the above terms. No costs.

Order Dasti to parties.

S. RAVINDRA BHAT,J

AUGUST 16, 2007
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